IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 6TH DECEMBER 2007 / 15TH AGRAHAYANA 1929

Crl.MC.No. 3635 of 2007()

SC.1530/2005 of ASSISTANT SESSIONS COURT, PAYYANNUR

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PETITIONER: ACCUSED NO.4

KANDATHIL SAKKARIYA, S/O.HAMSA,
AGED 33 YEARS, PANAPUZHA AMSOM DESOM,
ALAKKAD ARIYAM P.O., PAYYANNUR, KANNUR
DISTRICT.

BY ADV. SRI.M.SASINDRAN
SRI.K.P.HARISH

RESPONDENTS: COMPLAINANT

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 06/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.3635 of 2007

Dated this the 6th day of December 2007

O R D E R

The petitioner is the fourth accused and he faces indictment in a prosecution for offences punishable inter alia under Sections 307 and 326 I.P.C. Final report has been filed. Cognizance has been taken. The case has been committed to the court of Session. The petitioner had also entered appearance before the Sessions Court. But thereafter he was not available. The case against the co-accused has already been tried. They were found not guilty and acquitted also. The case against the petitioner has been split up. The petitioner has been reckoned as an absconding accused. Coercive processes have been issued by the learned Sessions Judge to secure the presence of the petitioner. The petitioner finds such processes chasing him.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. His absence earlier was not wilful or deliberate. The petitioner is willing to surrender before the learned Magistrate and seek regular bail. But he apprehends that his application for bail may not be considered

by the learned Magistrate on merits, in accordance with law and expeditiously. He, therefore, prays that directions under Section 482 Cr.P.C. may be issued to the learned Magistrate to release the petitioner on bail when he appears and applies for bail.

3. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate, the circumstances under which he could not earlier appear before the learned Magistrate. I find absolutely no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific directions appear to be necessary. Sufficient general directions have been issued in Alice George vs. Deputy Superintendent of Police [2003(1)KLT 339].

4. In the result, this Criminal Miscellaneous Case is dismissed but with the specific observation that if the petitioner surrenders before the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass

appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

5. The learned counsel for the petitioner then submits that there may be a direction for expeditious disposal of the case against him. It is for the petitioner to first appear before the learned Magistrate and then make a request for expeditious disposal. The petitioner can certainly urge before the learned Magistrate that he is entitled for discharge so far as some of the offences are concerned. In respect of compoundable offences, if any, the petitioner can pray that composition may be accepted in respect of such offences. If there are any offences surviving, the petitioner can certainly request to the learned Magistrate for expeditious disposal of the case considering the fact that he is employed abroad and he is unable to remain in India. Such request of the petitioner shall be considered by the learned Magistrate and appropriate orders shall be passed.

6. Of course, the learned counsel for the petitioner further raises a contention that the proceedings are liable to be quashed invoking the powers under Section 482 Cr.P.C. In the light of the acquittal of the co-accused, the extraordinary

inherent jurisdiction can and ought to be invoked, submits the learned counsel for the petitioner.

7. I find absolutely no merit in that contention. Moosa vs. Sub Inspector of Police [2006(1) KLT 552 (FB)] is authority for the proposition that an absconding co-accused cannot claim any benefit or advantage on the basis of the materials adduced in evidence in the trial against the co-accused who face trial. In the instant case I find in the chief examination, all the witnesses supported the prosecution case; but in the course of cross-examination, because of the alleged settlement, they did not choose to support the case of the prosecution. Some of the offences alleged are non-compoundable offences also. In these circumstances, I am unable to accept the request for invocation of the jurisdiction under Section 482 Cr.P.C.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007